

BEFORE THE ARKANSAS STATE BOARD OF PHARMACY

IN THE MATTER OF

MIKE HOGAN,

P.D., No. 6974 and

WAL-MART PHARMACY #10-0125, No. 04-12673

Case No.- 2003-035

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER**

On October 14, 2003, the Arkansas State Board of Pharmacy (hereafter “the Board”) conducted a hearing in the above styled matter. After being duly served with notice thereof, Mike Hogan appeared in person and Wal-Mart Pharmacy #10-0125 (hereafter “Respondents”) appeared by Jason Reiser. From the testimony of witnesses and exhibits the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Respondent Mike Hogan holds a license as a pharmacist and at all times relevant herein was pharmacist-in-charge of Wal-Mart Pharmacy #10-0125, 2425 Zero St., Ft. Smith, Arkansas, which holds a pharmacy permit; said license and permit were issued by and both Respondents are subject to the jurisdiction of the Board.

2. During 2002 Donna Brashier was registered as a pharmacy technician and held a permit to work at Wal-Mart Pharmacy 10-0125; Ms. Brashier failed to renew said registration and permit for 2003 and the permit and registration expired December 31, 2002. In its permit renewal form for 2003, Respondent Wal-Mart failed to identify Ms. Brashier and state her permit number as a technician assisting pharmacists in performing pharmaceutical services for patients.

3. During January 1, 2003 through July 23, 2003 Ms. Brasher worked as a pharmacy technician assisting pharmacists in dispensing prescription drugs at Wal-Mart Pharmacy #10-0125 under the supervision of Respondent Hogan as pharmacist-in-charge when she was not currently registered and did not hold a permit as a pharmacy technician at said pharmacy, and when she did not have a current permit on display in said pharmacy.

4. On or about July 23, 2003 Respondent Wal-Mart Pharmacy #10-0125 knew that it was missing certain drugs from its inventory of controlled substances. By her own admission, at least part of the aforementioned losses were attributable to Donna Brashier. Respondent failed to file a report of the theft or loss of controlled substances, DEA Form 106, with the Board until on or about August 26, 2003.

CONCLUSIONS OF LAW

1. Respondent Hogan as pharmacist-in-charge is responsible for the actions of a pharmacy technician. Board Regulation 04-00-0001.

2. Respondent Hogan's conduct as set forth above in permitting Ms. Brashier to work as a pharmacy technician and to assist pharmacists performing pharmaceutical services during 2003 when she did not hold a pharmacy technician permit and did not display a current registration in said pharmacy violated Board Regulation 04-00-0002.

3. Respondent Hogan's violation of Board Regulations as set forth in C-2 constitutes gross unprofessional conduct pursuant to Board Regulation 02-04-0002(b) and A.C.A. § 17-92-311(a)(7) (Repl. 2002).

4. Respondent Wal-Mart Pharmacy's conduct as set forth above in permitting Ms. Brashier to work as a pharmacy technician and to assist pharmacists

performing pharmaceutical services during 2003 when she did not hold a pharmacy technician permit and did not display a current registration in said pharmacy in violation of Board Regulation 03-02-0002 constitutes grounds for the suspension or revocation of Respondent's pharmacy permit pursuant to A.C.A. § 17-92-407.

5. Respondent Wal-Mart's failure to file a report of the theft or loss of controlled substances within 7 days of the discovery of the loss of said drugs constitutes a violation of Board Regulation 07-04-0006.

ORDER

IT IS THEREFORE ORDERED that Respondent Mike Hogan shall pay a monetary penalty to the Board in the amount of five hundred dollars (\$500.00).

IT IS FURTHER ORDERED that Respondent Hogan shall be on probation for a period of one-year from the date of this order; Respondent shall comply with all provisions of Arkansas Pharmacy Law, Ark. Code Ann. § 17-92-101 *et seq.*, Board Regulations, the Controlled Substance Act, the Food, Drug, and Cosmetic Act, and all other state and federal law and regulations pertaining to the practice of pharmacy and drugs.

IT IS FURTHER ORDERED that Respondent Wal-Mart No. 10-0125 shall pay a monetary penalty to the Board in the amount of two thousand dollars (\$2,000.00).

IT IS FURTHER ORDERED that Respondents shall pay said monetary penalties to the Board on or before November 30, 2003.

IT IS SO ORDERED this 27th day of October 2003.

ARKANSAS STATE BOARD
OF PHARMACY

CHARLES CAMPBELL, Pharm. D.
Executive Director